

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL M. MCDONOUGH,, et al., )  
Plaintiffs, )  
v. ) NO. 2:06-cv-0242-AB

TOYS "R" US, INC. d/b/a BABIES "R" US, et al., )  
Defendants. )

ARIEL ELLIOT, et al., )  
Plaintiffs, )  
v. ) NO. 2:09-cv-6151-AB

TOYS "R" US, INC. d/b/a BABIES "R" US, et al., )  
Defendants. )



**OBJECTIONS OF KELLY SPANN, JENNIFER POPIEL AND MATHILDA FENTON  
TO SETTLEMENT OF CLASS ACTION, REQUEST FOR ATTORNEY'S FEES  
AND NOTICE OF INTENT TO APPEAR AT FAIRNESS HEARING**

COMES NOW, Objectors Kelly Spann, Jennifer Popiel, and Mathilda Fenton, (referred to herein as "Objectors"), by and through their counsel of record, and file their Objections to Settlement of Class Action and Request for Attorney's Fees scheduled for a fairness hearing on July 6, 2011, in support thereof submit the following to this Court:

1. Objectors each purchased Settlement Products from defendants during the relevant time periods as defined in the class definitions and are Members of one or more of the subclasses as defined by the court.

2. Objectors have attached hereto their validly sworn claim forms as required by this Court's Preliminary Approval Order.
3. Objectors intend to appear, through their counsel of record, the fairness hearing set for July 6, 2011.
4. Objectors hereby object to the settlement for the following reasons, to wit:
  - A. This proposed settlement runs afoul of the warnings published and promulgated by the Federal Judicial Center, titled "Managing Class Action Litigation: A Pocket Guide for Judges" *Rothstein, Barbara J, & Willging, Thomas E., Second Edition, Federal Judicial Center, 2010.*

**B. ATTORNEY FEES**

Class Counsel filed its voluminous fee application on May 24, 2011. In that application, class counsel seeks reimbursement of expenses and 33 1/3% of the common fund for fees. [Doc. # 69]. Objectors are unable to adequately address the fee issue at this time as Class Counsel has failed to comply with Rule 23(h)(1) of the Federal Rules of Civil Procedure. That provision states: "A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h) at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, **directed to class members in a reasonable manner.**" (Emphasis Added). Class counsel anticipated giving said notice by making the application available on the settlement website. The Notice to class members, specifically Section V(2), informed class members that the application would be available after it was filed with the court. However, as of June 6, 2011, the deadline for making filing any objections, the fee application was still not on the settlement website at [www.babyproductsantitrustsettlement.com](http://www.babyproductsantitrustsettlement.com). Objectors believe that the fee being requested is

excessive under the circumstances, but will supplement their objections on this issue prior to July 6, 2011. Objectors believe the supplementation is reasonable due to class counsel's failure to provide notice to class members in a reasonable manner.

**C. PROPOSED ALLOCATION**

Class Counsel is requesting the court divide the settlement fund among the various subclasses by assigning each subclass a certain percentage of the fund. Each subclass would be assigned a different percentage. There are several issues with that request. First, there has not even been a preliminary order by this Court on that request. Class Counsel filed a Motion for Order on Plaintiff's Motion for Entry of Proposed Allocation Order on May 24, 2011 [Doc. #739]. As of June 6, 2011, the deadline for filing these objections, the Court has not ruled on that motion. Therefore, the Objectors are required to object to a proposed order which this Court may enter, may enter with modifications, or may refuse to enter. Class members who went to the settlement website were misled into believing the Allocation Order had been approved by the Court. Under the link for "Case Documents", a class member can pull up a document that is identified as "Proposed Allocation Order." The document itself, when accessed through the website, is entitled "Allocation Order." However, it is not signed by the Court.

The most serious issue with the allocation being proposed by Class Counsel is that it is definitive evidence that Class Counsel has a conflict of interest. Nothing available to class members explains how the percentages were calculated. The fact that such a calculation was made by the same Class Counsel for all subclasses is improper and impermissible. Class Counsel cannot adequately represent the interest of all subclasses because members of each of the subclasses would seek the most money possible from the fund. Yet, their legal representative

is also the legal representative of the other subclasses who these class members would like to see receive a lower percentage of the same fund. The conflict in this situation is so definitive and serious that this court must reconsider its ruling certifying the class if the conflict prevents the representative party from fairly and adequately protecting the interests of all class members. It is quite possible that based upon the different percentages allocated to each of the subclasses, that payments made to members of one subclass will vary widely from payments made to members of the other subclasses. *Petrovic v. Amaco Oil Company*, 200 F.3d 1140, 1145 (8th Cir., 1999); See also *Ortiz, et al., v. Fibre Board Corp., et al.*, 527 U.S. 815 (1998). The conduct of Class Counsel is particularly troublesome when viewed in conjunction with the objection of Class Representative Yossi Zarfati in which Mr. Zarfati raises his own representative Yossi Zarfati in which Mr. Zarfati raises his own concerns with Class Counsel's conflict of interest as it relates to the incentive awards.

WHEREFORE, Objectors pray that this Court a) appoint separate class counsel for each of the subclasses; b) make appropriate orders concerning attorney fees upon review of Objectors supplementation of their objections as they relate to attorney fees prior to July 6, 2011, the date of the fairness hearing, and for such other relief the court deems just and proper.

Respectfully Submitted,

By: Law Offices of Mark W. Ford, LLC

Dated: June 6, 2011

/S/ Mark W. Ford  
Mark W. Ford, Esq., Attorney for Objector

**CERTIFICATE OF SERVICE**

On this 6<sup>th</sup> day of June, 2011, a copy of this document was served upon the following via the United States Mail addressed to:

Eugene A. Spector  
Co-Lead Counsel for Plaintiffs  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103

Mark Weyman  
Counsel for Defendants  
599 Lexington Ave.  
New York, NY 10022

/S/ Dawn Sorbello  
Dawn Sorbello, Secretary to  
Mark W. Ford, Esq.

Must be Postmarked  
No Later Than  
August 1, 2011

**BABY PRODUCTS ANTITRUST LITIGATION SETTLEMENT**  
c/o The Garden City Group, Inc.  
PO Box 9679  
Dublin, Ohio 43017-4979  
1-888-292-8492  
Fax: 1-888-476-7153  
Email: [questions@babyprouctsantitrustsettlement.com](mailto:questions@babyprouctsantitrustsettlement.com)

BBA



Claim Number:

Control Number:

## **CLAIM FORM AND RELEASE**

**Your Signed Claim Must be Postmarked, Faxed or Sent Electronically in  
PDF Format To The Claims Administrator No Later than August 1, 2011**

### **1. WHAT THIS CLAIM FORM CONCERNS**

This claim form concerns the settlement of two consolidated lawsuits that were filed by two groups of consumers claiming that Toys "R" Us and Babies "R" Us had conspired with certain baby product manufacturers to restrict competition in violation of federal antitrust law. Plaintiffs assert that this conduct caused you to pay higher prices at Toys "R" Us and Babies "R" Us for BabyBjorn baby carriers, Britax car seats, Maclaren strollers, Medela Pump In Style breast pumps, Peg Perego car seats, strollers and high chairs, and all Kids Line products, such as crib sets, blankets, valances, sheets, wall decorations, baskets, pillows, pads, hampers, porta crib sets, lamps, shelves, stackers, rugs, or mobiles. Plaintiffs' claims are disputed and Defendants deny entering into any conspiracies or engaging in any other unlawful conduct. The parties have agreed to settle the litigation in lieu of trial.

**Please read the Full Notice (available at [www.babyprouctsantitrustsettlement.com](http://www.babyprouctsantitrustsettlement.com)) carefully before filling out this Form.**

### **2. ELIGIBLE PAYMENTS**

You may be eligible to recover a payment from the settlement for each of the following products you purchased at Toys "R" Us or Babies "R" Us during the time periods indicated

- BabyBjorn baby carriers between February 2, 2000 and April 30, 2005.
- Britax car seats between January 1, 1999 and January 31, 2011.
- Maclaren strollers between October 1, 1999 and January 31, 2011.
- Medela Pump In Style breast pumps between July 1, 1999 and January 31, 2011.
- Peg Perego car seats, strollers or high chairs between July 1, 1999 and January 31, 2011, and/or
- All Kids Line products between January 1, 1999 and December 31, 2006

You may be eligible to recover a payment from the settlement for all purchases for which you provide a proper claim form. This is described in greater detail in the Full Notice available at [www.babyprouctsantitrustsettlement.com](http://www.babyprouctsantitrustsettlement.com).

### **3. HOW YOU CAN QUALIFY FOR AND RECEIVE PAYMENT**

In order to be eligible to receive any compensation from the settlement, you must

- fill out this Claim Form in its entirety.
- sign the verification statement at the end of the Claim Form.
- return this completed Claim Form with your supporting documentation, if any, no later than August 1, 2011.

All information submitted will be kept confidential.



### PART I - CLAIMANT IDENTIFICATION

Claimant Name(s) (as you would like the name(s) to appear on the check, if eligible for payment)

KELLY MARIE SPAIN

Name of the Person you would like the Claims Administrator to Contact Regarding This Claim (if different from the Claimant Name(s) listed above)

**Claimant or Representative Contact Information:**

The Claims Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If this information changes, you **MUST** notify the Claims Administrator in writing.

Street Address:

1905 ST. LOUIS STREET

City:

FLORISSANT

State and Zip Code:

MO 63033

Country (Other than U.S.):

Daytime Telephone Number: (314) 249-9296

Evening Telephone Number: (314) 249-9296

Email Address: KELLYMKORTE@YAHOO.COM

Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.

### PART II - BABY PRODUCT PURCHASE INFORMATION

You may be entitled to a settlement payment for each of the baby products listed above you purchased at Toys "R" Us or Babies "R" Us during the time periods indicated. To recover the maximum amount you can from the Settlement Fund for your purchases, attach documentation showing your purchase(s) of the products listed above. Acceptable proof may include receipts, cancelled checks, credit card statements, records from Toys "R" Us or Babies "R" Us, or other records that show you purchased the baby product and when the purchase was made. In order to allow the Claims Administrator to verify your documentation, you must complete the following chart.


**PART II - BABY PRODUCT PURCHASE INFORMATION (CONTINUED)**

Date of Purchase	Place of Purchase (Toys "R" Us or Babies "R" Us)	Product Purchased	Proof of Purchase Attached
51 12003	On-Line <input type="checkbox"/> N <input checked="" type="checkbox"/> Store Babies "R" US City HAZELWOOD State MD	Brand KIDS LINE <small>(e.g. name of manufacturer)</small> Type DIAPER HOLDER <small>(e.g. stroller)</small> Model UNKNOWN Price UNKNOWN	<input checked="" type="checkbox"/> <input type="checkbox"/> N <input checked="" type="checkbox"/>
51 12003	On-Line <input type="checkbox"/> N <input checked="" type="checkbox"/> Store Babies "R" US City HAZELWOOD State MD	Brand KIDS LINE <small>(e.g. name of manufacturer)</small> Type MOBILE <small>(e.g. stroller)</small> Model PA-9239(HK) Price UNKNOWN	<input type="checkbox"/> <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/>
51 12003	On-Line <input type="checkbox"/> N <input type="checkbox"/> Store Babies "R" US City HAZELWOOD State MD	Brand KIDS LINE <small>(e.g. name of manufacturer)</small> Type BEAR BUMPER SKIRT <small>(e.g. stroller)</small> Model CA-30083 Price UNKNOWN	<input type="checkbox"/> <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/>
51 12003	On-Line <input type="checkbox"/> N <input checked="" type="checkbox"/> Store Babies "R" US City HAZELWOOD State MD	Brand KIDS LINE <small>(e.g. name of manufacturer)</small> Type SHEET/LAMINATES(3P) <small>(e.g. stroller)</small> Model UNKNOWN Price UNKNOWN	<input type="checkbox"/> <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/>
/ /	On-Line <input type="checkbox"/> N <input type="checkbox"/> Store _____ City _____ State _____	Brand _____ <small>(e.g. name of manufacturer)</small> Type _____ <small>(e.g. stroller)</small> Model _____ Price _____	<input type="checkbox"/> <input type="checkbox"/> N <input type="checkbox"/>

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR PURCHASES YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX  IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED



**PART III - VERIFICATION**

I declare under penalty of perjury of the laws of the United States of America that all the information provided in this Claim Form is, to the best of my knowledge, accurate and correct.

Kelly M. Spano  
Signature

April 24, 2011  
Date

**Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.**

Please mail, fax or email your completed Claim Form, with your proofs of purchase, to:

**BABY PRODUCTS ANTITRUST LITIGATION SETTLEMENT**

c/o The Garden City Group, Inc.  
PO Box 9679  
Dublin, Ohio 43017-4979

Fax: 1-888-476-7153

Email: [questions@babyproductsantitrustsettlement.com](mailto:questions@babyproductsantitrustsettlement.com)

**Your Signed Claim Must be Postmarked, Faxed or Sent Electronically In PDF Format To The Claims Administrator So That It Is Postmarked or Received No Later than August 1, 2011.**

Must be Postmarked  
No Later Than  
August 1, 2011

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c/o The Garden City Group, Inc.  
PO Box 9679  
Dublin, Ohio 43017-4979  
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- MacLaren strollers between October 1, 1999 and January 31, 2011;
- Medela Pump In Style breast pumps between July 1, 1999 and January 31, 2011;
- Peg Perego car seats, strollers or high chairs between July 1, 1999 and January 31, 2011; and/or
- All Kids Line products between January 1, 1999 and December 31, 2006.

You may be eligible to recover a payment from the settlement for all purchases for which you provide a proper claim form. This is described in greater detail in the Full Notice available at [www.babyprouctsantitrustsettlement.com](http://www.babyprouctsantitrustsettlement.com).

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- sign the verification statement at the end of the Claim Form;
- return this completed Claim Form with your supporting documentation, if any, no later than August 1, 2011.

All information submitted will be kept confidential.



### PART I - CLAIMANT IDENTIFICATION

Claimant Name(s) (as you would like the name(s) to appear on the check, if eligible for payment):

Jennifer J. Popiel

Name of the Person you would like the Claims Administrator to Contact Regarding This Claim (if different from the Claimant Name(s) listed above):

#### Claimant or Representative Contact Information

The Claims Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If this information changes, you MUST notify the Claims Administrator in writing.

Street Address:

6525 Michigan Ave

City:

Saint Louis

State and Zip Code:

MO, 63111

Country (Other than U.S.):

Daytime Telephone Number: (314) 853 - 8724      Evening Telephone Number: (314) 782 - 5206

Email Address: Popieljj@gmail.com

(Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)

### PART II - BABY PRODUCT PURCHASE INFORMATION

You may be entitled to a settlement payment for each of the baby products listed above you purchased at Toys "R" Us or Babies "R" Us during the time periods indicated. To recover the maximum amount you can from the Settlement Fund for your purchases, attach documentation showing your purchase(s) of the products listed above. Acceptable proof may include receipts, cancelled checks, credit card statements, records from Toys "R" Us or Babies "R" Us, or other records that show you purchased the baby product and when the purchase was made. In order to allow the Claims Administrator to verify your documentation, you must complete the following chart.



## PART II - BABY PRODUCT PURCHASE INFORMATION (CONTINUED)

Date of Purchase	Place of Purchase (Toys "R" Us or Babies "R" Us)	Product Purchased	Proof of Purchase Attached
02/15/2002	On Line <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/> Store (6038) 16-18 W Mason St City Green Bay, WI State WI	Brand Britax (e.g. name of manufacturer) Type car seat (e.g. stroller) Model Marathon Price approx \$160	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
03/10/2007	On Line <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/> Store (9514) 16926 Lindbergh City Saint Louis State MO	Brand Britax (e.g. name of manufacturer) Type car seat (e.g. stroller) Model Marathon Price approx \$190	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
04/10/2007	On Line <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/> Store (7516) 6726 Lindbergh City Saint Louis State MO	Brand Britax (e.g. name of manufacturer) Type car seat (e.g. stroller) Model Marathon Price approx \$190	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
/ /	On Line <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/> Store _____ City _____ State _____	Brand _____ (e.g. name of manufacturer) Type _____ (e.g. stroller) Model _____ Price _____	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
/ /	On Line <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/> Store _____ City _____ State _____	Brand _____ (e.g. name of manufacturer) Type _____ (e.g. stroller) Model _____ Price _____	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR PURCHASES YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX  IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED



**PART III - VERIFICATION**

I declare under penalty of perjury of the laws of the United States of America that all the information provided in this Claim Form is, to the best of my knowledge, accurate and correct.

Jane [Signature]  
Signature

June 6, 2011  
Date

**Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.**

Please mail, fax or email your completed Claim Form, with your proofs of purchase, to:

**BABY PRODUCTS ANTITRUST LITIGATION SETTLEMENT**

c/o The Garden City Group, Inc.  
PO Box 9679  
Dublin, Ohio 43017-4979

Fax: 1-888-476-7153

Email: [questions@babyproductsantitrustsettlement.com](mailto:questions@babyproductsantitrustsettlement.com)

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